

State of California  
BOARD OF EQUALIZATION

**SALES AND USE TAX REGULATIONS**

**Regulation 1585. CELLULAR TELEPHONES, PAGERS, AND OTHER  
WIRELESS TELECOMMUNICATION DEVICES.**

*Reference:* Sections 6006, 6010, 6011, 6012 and 6055, Revenue and Taxation Code.

**(a) DEFINITIONS.**

(1) **WIRELESS TELECOMMUNICATION DEVICE.** A portable communication device such as a wireless telephone or pager requiring activation by a wireless telecommunications service provider or seller of utility services in order to send, receive, or send and receive transmissions via a network of wireless transmitters throughout multiple service areas, or otherwise. The term includes devices based on analog technology and devices based on digital technology.

(2) **WIRELESS TELECOMMUNICATIONS SERVICE PROVIDER.** A utility regulated by the Public Utilities Commission or the Federal Communications Commission which offers or provides wireless communication or paging services.

(3) **BUNDLED TRANSACTION.** The retail sale of a wireless telecommunication device which contractually requires the retailer's customer to activate or contract with a wireless telecommunications service provider for utility service for a period greater than one month as a condition of that sale. A transaction is a bundled transaction within the meaning of this regulation without regard to the method in which the price is stated to the customer. Also, it is immaterial whether the wireless telecommunication device and utility service are sold for a single price or are separately itemized in the context of a sale or on a sales invoice. A transaction is a bundled transaction if goods and services are sold as a single package, whether wireless telecommunication service is supplied to the customer by the retailer or by an independent service supplier. In such transactions, wireless devices may be sold at a "discounted" price, as an inducement for the customer to enter into an extended service contract. The fact that a wireless telecommunication device, such as a PCS (Personal Communication Service) telephone, may, because of its technological specifications, be subject to activation with only one service supplier, does not alone mean that the sale of the device will be treated as a bundled transaction.

(4) **UNBUNDLED SALES PRICE.** The price at which the retailer has sold specific wireless telecommunication devices to customers who are not required to activate or contract for utility service with the retailer or with an independent wireless telecommunications service provider for utility service as a condition of that sale. If the retailer cannot establish an unbundled sales price to the satisfaction of the Board based upon its own sales records, the unbundled sales price of the device shall equal the fair retail selling price of that device. If tax is reported and paid on an amount equal to the cost of the device plus a markup on cost of at least 18 percent, such amount shall be regarded as the fair retail selling price of the device. The unbundled sales price of an obsolete wireless telecommunication device shall equal the actual selling price of that device.

**(b) APPLICATION OF TAX.**

(1) **IN GENERAL.** Tax applies to the gross receipts from the retail sale of a wireless telecommunication device. The retailer of the wireless telecommunication device is required to report and pay the tax.

(2) **UNBUNDLED TRANSACTIONS.** Tax applies to the gross receipts from the retail sale of a wireless telecommunication device prior to October 1, 1995, or sold in a transaction not described in subdivisions (a)(3), (b)(5), or (b)(6), measured by the actual gross receipts received by the retailer from the end-use customer from the sale of that device.

(3) **BUNDLED TRANSACTIONS.** Tax applies to the gross receipts from the retail sale of a wireless telecommunication device sold in a bundled transaction, measured by the unbundled sales price of that device. Tax applies to the unbundled sales price whether the wireless telecommunication device and utility service are sold for a single price or are separately itemized in the context of a sale or on a sales invoice. The retailer of the wireless telecommunication device is required to report and pay tax measured by the unbundled sale price of the device and may collect tax or tax reimbursement from its customer measured by the unbundled sales price. Tax does not apply to the charges in excess of the unbundled sales price made for telecommunication services.

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(4) **ACTIVATION FEES.** Tax does not apply to a one-time charge for activating a new wireless telecommunication device with, or on behalf of, a wireless telecommunications service provider where the charge is separately stated and is not for the electronic or physical modification of the device in order for it to function within a wireless telecommunications service provider's service network. A one-time charge for activating a wireless telecommunication device is subject to tax if the activation consists of the physical or electronic modification or fabrication of a wireless telecommunication device in order for the device to function within a wireless telecommunications service provider's service network. The person collecting this fee is required to report and pay tax on that amount. Any subsequent charge for the physical or electronic modification or fabrication of that device which changes the customer's telephone number or which allows that customer to utilize a different wireless telecommunications service provider is subject to tax as set forth in Regulation 1546 (18 CCR 1546).

For purposes of this subdivision, "physical or electronic modification or fabrication of a wireless telecommunication device" does not include the manual input of activation information into the device solely by means of the device's own numeric or function keys, nor does it include the remote electronic input of activation information into the device.

(5) **CONSIGNMENT TRANSACTIONS AND SALE OR RETURN TRANSACTIONS.** In transactions of this type, a service provider furnishes an inventory of wireless telecommunication devices to an independent retailer without charge or at a nominal price. The independent retailer sells the devices to end-use customers, retaining the proceeds of sale. The end-use customer must contract for wireless service for a period greater than one month with the wireless service provider or, if the end-use customer does not enter such an extended service contract, the end-use customer is required to pay additional service consideration for the device to the service provider. Typically, a credit card imprint is taken by the retailer, to the benefit of the service provider, at the time of the sale, to guarantee payment of the additional consideration. This is a bundled transaction in which the measure of tax is the unbundled sales price. The service provider may collect sales tax reimbursement from the end-use customer. The nominal amount collected from the end-use customer is in the nature of a commission and is not subject to tax. The person providing the device to the end-use customer may not collect sales tax reimbursement from the end-use customer.

(6) **SALES AT LESS THAN 50 PERCENT OF COST.** Operative January 1, 1999, except with respect to transfers described in (b)(5), any person making any sale, whether at retail or for resale, in a bundled transaction or otherwise, of a wireless telecommunication device at a price, measured by the actual sales price in an unbundled transaction or the unbundled sales price, as determined under this regulation, in a bundled transaction, less than 50 percent of cost, must report and pay use tax measured by the cost to it of the device. If the sales at less than 50 percent of cost is a retail sale, sales tax does not apply to that retail sale. The person making the sale of the device is the consumer of the device for sales and use tax purposes and may not collect tax reimbursement from its customer. Likewise, persons who sell devices for resale at less than 50 percent of cost are consumers. They must report and pay use tax measured by the cost to them of the device. In this case, any subsequent retail sale of the device is subject to sales tax unless that sale is at less than 50 percent of cost. Sales tax reimbursement may be collected from the end-use customer based upon the retail selling price of the device to the end-use customer. This subdivision shall not, however, be applicable in any instance involving the sale of a functionally or economically obsolete wireless telecommunication device.

### **(c) BAD DEBT DEDUCTIONS**

(1) **IN GENERAL.** The provisions of Regulation 1642, "Bad Debts" (18 CCR 1642), apply to retailers making sales of wireless telecommunication devices pursuant to subdivision (b)(1).

(2) **CHARGE-BACKS TO THE RETAILER.** Retailers reporting tax measured by the unbundled sales price of a wireless telecommunication device may take a bad debt deduction pursuant to Regulation 1642 when a payment or rebate from a wireless telecommunications service provider is charged-back to the retailer based on a customer's termination of its contract with the wireless telecommunications service provider before the date specified in the utility service contract. The amount of bad debt deduction claimed by a retailer may not exceed the difference between the gross receipts on which tax was reported and paid by the retailer, and the total amount collected and retained by the retailer from the sale of the wireless telecommunication device excluding any amounts collected from the customer as tax or tax reimbursement. Any tax or tax reimbursement collected by the retailer on the amount of bad debt deduction claimed by the retailer constitutes excess tax reimbursement and must be returned

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to the customer or paid to the Board unless the customer and retailer agree that this amount may be applied toward the amounts owed by the customer on the debt. The customer and retailer will be regarded as having agreed to the application of any excess tax reimbursement to the customer's debt where the retailer's books reflect both the debt owed by the customer and the corresponding credit for excess tax reimbursement.

*History:* Adopted October 15, 1998, effective February 11, 1999.

*Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.*